Supreme Court, U.S.
FILED

94 417 JUL 18 1994

OFFICE OF THE CLERK

NO._____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1994

BEATRICE RHEA MORRIS
Petitioner

VS.

SOUTHWESTERN BELL TELEPHONE COMPANY
a. MISSOURI CORPORATION
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Beatrice Rhea Morris
2614 Pasteur Avenue
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(214) 321-6374
(214) 324-7877
Pro Se

67 pp

QUESTIONS PRESENTED

1. Did the District Court for the Northern District of Texas, Dallas Division fail to consider certain enumerated factors set forth for appointment of legal counsel and take no action according to the law?

2. Did the District Court for the Northern District of Texas, Dallas Division fail to consider evidence presented as the law provides according to Article I Rule 101, 102, and 103 of the Federal Rules of Evidence?

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42 U. S. C. s 2000e - 2(a)(1)
28 U. S. C. s 1291

United States Constitution 5th Amendment

46 Am Jur 2d, Judgments S 117

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Plaintiff's opportunity to contest defendant's evidence. After defendant presents its evidence of nondiscriminatory reason for the employment decision, plaintiff has the opportunity to discredit this evidence by showing that the reason was pre textual. Cuddy v. Carmine, 694 F. 2d 853, 857 (D.C. Cir 1982); Hagelthorn v. Kennecott corp., 710 F. 2d 76, 81-82 (2d Cir. 1983); Sweat v. Miller Brewing Co., 708 F. 2d 655, 656 (11th Cir. 1983)

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NO._____

IN THE SUPREME COURT OF THE
UNITED STATES OF AMERICA

OCTOBER TERM 1994

BEATRICE RHEA MORRIS
Petitioner

VS

SOUTHWESTERN BELL TELEPHONE COMPANY
a Missouri Corporation
Respondent

PETITIONS FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

PRELIMINARY STATEMENT

Petitioner, Beatrice Rhea Morris, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit affirming the District Court for the Northern District of Texas Dallas Division. Also, this petition for writ of certiorari is intended to seek due process of which I was denied from the onset of this case. Your Honor, I pray justice in this case. I beg and plead for reason in support of a cause against another before this court of law and supplicate earnestly, offer no excuse, but the truth.

APOLOGY

I beg for Apology for filing Pro Se Petition for Writ of Certiorari to the United States of Appeals for the Fifth Circuit. I attempted early on for the assistance of private counsel, but was unsuccessful for reasons beyond my control, i.e., inability to pay legal fees and expenses. Also, I requested permission to commence an action against the defendant named above without the payment of fees, costs or security but was never given any decision from the United States District Court. I reluctantly, but nervously, am making an attempt to represent myself to the best of my ability, as a Pro Se Litigant. I do not wish to tax the Court or the Defense Attorneys unnecessarily, but I am attempting to convey the truth as it truly occurred. I appreciate the Court's time, patience and consideration to allow Pro Se to try to interpret course of procedures, rules, jurisdiction, motions, briefs, applications, cases, etc., in the best possible manner. I pray you will accept this petition, pleading in the manner it is being submitted as an attempt to respond with thoroughness.

OPINIONS BELOW

The Opinions and Summary Calendar of the Court of Appeals is reported as Beatrice Rhea Morris vs. Southwestern Bell Telephone Company, a Missouri Corporation, in the District Court for the Northern District of Texas, Dallas Division filed October 5, 1992, and appears in Appendix A through D to this petition. The unpublished written Summary Judgment of the District Court for the Northern District, Dallas Division appearing Appendix A, I, J, K, and L to this petition. The unpublished written Motion for Reconsideration and Memorandum in the District Court appears in Appendix I to this petition. An Order setting answer due for Summary Judgment by the District Court, Northern District appears in Appendix G to this petition. An Order mooting Motion to Dismiss by the District Court for the Northern District appears in Appendix F to this petition Complaint under Civil Rights Act 1964 and motion for legal counsel appears in Appendix E and H to this petition. Title VII Civil Rights procedures appear in Appendix E, J, and L to this petition.

JURISDICTION

The Court of Appeals Opinion in this matter was filed on March 22, 1994, set forth in Appendix D. A timely Petition for Rehearing was filed on April 5, 1994, set forth in Appendix C. The court of Appeals denial of Petition for Rehearing was issued on April 18, 1994, and set forth in Appendix B. An order denying Petition for Reconsideration filed on September 27, 1993 and appears in Appendix K. A petition for Motion for Reconsideration filed September 15, 1993 appears in Appendix J. The Opinion and Order granting Summary Judgment appears in Appendix I. This Court's jurisdiction is invoked under Title VII EEOC Proceedings, and the Civil Rights Act of 1964 set forth in Appendix A, E, and J.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Pursuant to 28 U.S.C. S 1291, 42 U.S.C. S 2000e-2(a)(1), and Amendment V to the United States Constitution is set forth in Appendix A.

STATEMENT OF THE CASE

The United States District Court for the Northern District of Texas, Dallas Division had jurisdiction pursuant to Title VII of the Civil Rights Act of 1964.

A. The Summary Judgment of the Federal District Court

On September 3, 1993, I received Opinion and Order dated August 31, 1993 ordering the Defendant's Motion for Summary Judgment be granted. It was at this time I understood that the District Court had not answered my request by application for counsel or any of my inquiries about the status of my application.

After the District Court's Order on January 27, 1993, I awaited answer from the Court for legal counsel. I made an appearance on June 8, 1993 in Judge Buchmeyer's Court to inquire of the Status for appointment of an attorney. I was advised by the Judge's clerk that it would be best to address a letter to the court stating my concerns and inquiries.

Court Order dated April 14, 1993 with attached Court Order dated January 23, 1993, the District Court so ordered: (a) Defendant shall file proper answer by April 23, 1993, (b) Defendant shall file it's Motion for Summary Judgment by May 12, 1993, and (c) consideration for counsel could not be addressed until Defendant filed Motion for Summary Judgment. With respect to the Court, I awaited answer for legal counsel.

On June 10, 1993 I certified a letter to the District Court inquiring about decision for counsel. On July 21, 1993, I reviewed my case file at 1100 Commerce Street, 14th floor and discovered that the certified letter was not included in the file. When I questioned the Clerk about the letter, I was told that it was addressed to the Judge, but not to the District Clerk. I told the Clerk that I had hand walked a copy of the letter to Judge Buchmeyer's office, and certified the original to the District Clerk. The Clerk took the letter and confirmed with her supervisor. The Clerk advised me that the letter would be placed in my case file.

B. The Motion for Reconsideration

On September 15, 1993 I submitted a Motion for Reconsideration with Brief on the basis pursuant to Rule 56 (e)(g) of the Federal Rules of Civil Procedure. In support of this motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure in that evidence presented by the Defense was fraudulent and misrepresenting as substantiated by the 22 pieces of official Company documents submitted. On September 27, 1993, I received an Order denying my Motion for Reconsideration with no analysis of law, but subjective on the part of the District Court.

C. The Court of Appeals' Decision

On October 27, 1993 I submitted a petition for appeal in the District Court for the Fifth Circuit, and filed my Brief on January 11, 1994, pursuant to Title II Rule 3(a) of the Federal Rules of Civil Procedure denying motion for reconsideration (filed September 27, 1993). I, with respect to the Court, followed procedures of EEOC and the pro se process awaited ruling from the Court on my application request for legal representation. I understood Court's order dated January 27,

1993 andApril 14, 1993 that consideration for legal counsel would not be entertained until Defendant answered Order for summary judgment. In support of the petition, I cited letter to the Court on April 26, 1993 and letter dated on June 10, 1993. I contend that failure to answer summary judgment occurred because of awaiting Court's decision on request for attorney representation and no reply to letter dated to the Court on June 10, 1993.

TITLE VII EEOC CIVIL PROCEEDING

On October 5, 1992, I filed an action entitled Beatrice Rhea Morris vs. Southwestern Bell Telephone Company (CA 3::92-2043 R) in the United States District Court for the Northern District of Texas - Dallas Division, seeking reinstatement to previous management position with retroactive back pay and benefits with no loss of seniority or time in grade for promotional and other considerations from the effective date of demotion. expulsion of all correspondence and any other annotated material regarding this matter from my personnel record. In addition, I wanted to include a compensatory sum for the emotional pain, suffering and inconvenience caused by the malicious discriminatory action taken by the Company on the basis that demotion occurred in order for newly promoted white female, Sandy Mauer could be placed. The act for being singled out for violation of an unwritten policy (governing the personal use of Yellow Cab slips) by being subjected to adverse personnel action by Southwestern Bell management officials. There exists no written policy outlining any rules explaining the use of cab vouchers only the generalization under the Company's Code of Business Conduct. All managers in Southwestern Bell Telephone Company have the authority to sign cab vouchers for subordinates, peers, and other upper level management personnel. As a manner of practice for years prior to 1985, Network Operator Services furnished the availability of Yellow Cab

at no cost to employees working late night tours starting at 4.15 P.M. This provision was a means of attracting employees to these undesirable hours of work. Also, my immediate supervisor, Kim Orsak was aware that I was using cab vouchers from home to work by her acknowledgment of signing the bill payment each month that indicated the names of all employees for that time. But what I don't understand still is what constitutes personal business versus work related travel when all trips were to and from work.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for the following reasons: This Petition presents an issue resolved from implications by this Court but not specifically and unequivocally decided by this Court, and the opinion below conflicts by implication, with previous decisions of the district Court and with the decision of another Circuit.

This petition for Writ of Certiorari is to petition for amendment of decision made in the District Court and in the Appeals Court, for reasons as follows:

I filed my law suit in the District Court for the Northern District of Texas, Dallas Division on October 5, 1992. After receiving a Right to Sue letter, dated July 29, 1992 informing me that less than 180 had past, but the Commission could not finish the investigation within the time allowed. I met the statue of limitation in this case. I also filed a Motion for a court appointed attorney.

The Order and Opinion denying my Motion for Reconsideration should be amended because (a) the District Court's oversight to answer my request for legal counsel denying my individual procedural rights and (b) when the existence of

evidence in a Case is such that a different conclusion can rationally be drawn thereon, the case presented is one for the jury (46 AM Jur 2d, Judgments S 117). The District Court rendered a subjective opinion and denied Motion for Reconsideration when Defendant relied on sworn Affidavit of Hardee Mills, District Manager-OPR SCVS.,k and all exhibits attached to the referenced affidavit when evidence presented questioned the validity.

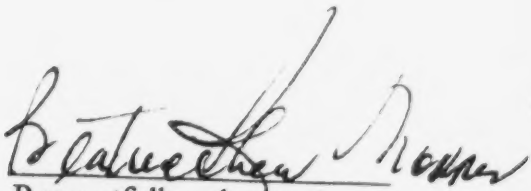
The jurisprudence system of the United States is designed to allow all interested parties to present facts in support of their contentions. The United States Constitution requires this. The courts have always recognized the danger of allowing only one side to present its story, and observed how the "facts" have changed once the other has been allowed to cross examine or present evidence. I was not given this opportunity, and now must request this Court to allow my voice to be heard or the introduction of facts in my behalf.

Finally, my plea is to petition is to reinstate and/or waiver all factors that would prevent me from going forward with my case that was dealing with Job discrimination, unfair treatment on the job, false accusations, lack of due process, deviation of character, and the need to clear my personal record.

CONCLUSION

For the reason set forth above, a Writ of Certiorari should be issued to review the judgment and opinion of the Court of Appeals and District Court.

Dated July 15, 1994



Respectfully submitted
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(214) 321-6374
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Pro Se

IN THE
UNITED STATES COURT OF APPEALS
FOR THE
FIFTH CIRCUIT

NO. 93 - 1988

Beatrice Rhea Morris
Plaintiff/Appellant

V.

SOUTHWESTERN BELL TELEPHONE COMPANY
Defendant/Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BRIEF OF APPELLANT BEATRICE RHEA MORRIS

U S Court of Appeals
FILED
January 11 1994
Charles R. Fuldruge III, Clerk

Beatrice Rhea Morris
Plaintiff Pro Se

CERTIFICATE OF INTERESTED PARTIES

I hereby certify, pursuant to Local Fifth Circuit 28.2.1, that the following parties have an interest in the outcome of this case.

NAACP Dallas Chapter

The Network of Black Telecommunicators
of Southwestern Bell Corporation

National Association of Black Telecommunications Professionals,
Washington, D. C.

Black State Employees Association of Texas, Inc.

Dallas Urban League

National Council of Negro Women

South Dallas Business and Professional Women Club, Inc.

African American Council for Empowerment

National Association of Black Telephone Professional
Dallas Chapter

Dallas Black Chamber of Commerce

Warriors

Southwestern Bell Telephone Company
(Attorney - Peter C. Myers Jr.)

Kim Orsak

Hardee Mills

Bob Thomas

Jerry Allison

Dated January 8, 1994

s/Beatrice Rhea Morris
Plaintiff/Appellant
Pro Se

STATEMENT OF JURISDICTION

This Court has subject matter jurisdiction over the final judgment of the District Court pursuant to 28 U.S.C. S 1291. Appellant submits that the District violated the Constitutional Rights (5th Amendment) by ignoring her application for legal counsel at the time of filing her complaint.

STATEMENT OF ISSUES

The issues presented by this appeal are as follows

1. THE DISTRICT COURT FAILED TO ANSWER APPELLANT'S APPLICATION FOR LEGAL COUNSEL WHEN JURISDICTION FELL WITHIN IT'S REALM, AS A MATTER OF LAW.

2. THE DISTRICT COURT DEMONSTRATED JUDICIAL BIAS FOR OVER EXTENSION OF TIME AFFORDED SOUTHWESTERN BELL TELEPHONE COMPANY IN THEIR INITIAL ANSWER TO COMPLAINT.

3. THE DISTRICT COURT DEMONSTRATED JUDICIAL BIAS WHEN IT ORDERED SUMMARY JUDGMENT FROM DEFENDANT.

4. THE DISTRICT COURT DEMONSTRATED JUDICIAL BIAS WHEN IT IGNORED APPELLANT'S WRITTEN REQUEST TO AN ANSWER FOR LEGAL COUNSEL.

5. THE DISTRICT COURT DEMONSTRATED JUDICIAL BIAS WHEN THE EXISTENCE OF RELEVANT EVIDENCE CITED IN THE MOTION FOR RECONSIDERATION WAS IGNORED AS PURSUANT TO

ARTICLE I RULE 101, 102, AND 103 OF THE FEDERAL RULES OF EVIDENCE.

STATEMENT OF CASE

Course of Proceeding and Disposition Below

This appeal challenges the District Court's judicial process when the existence of relevant evidence in a case is such that a different conclusion can rationally be drawn thereon, then the case presented is one for the jury (46 Am Jur 2d, Judgments S 117). The District Court rendered a subjective opinion and denied Motion for Reconsideration when Defendant relied on sworn Affidavit of Hardee Mills and all exhibits attached to the referenced affidavit.

As background, appellant Beatrice Rhea Morris Filed Action for violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. S 2000e-2(a)(1). Appellant contends that demotion was pre textural in order for newly promoted white female, Sandy Mauer, to be situated (after being singled out for violation of an unwritten policy, governing the personal use of Yellow Cab slips).

On January 2, 1993, the District Court mooted Defendant's Motion to Dismiss and requested Southwestern Bell Telephone Company to answer complaint by 2-6-93. District Court ordered appellant to furnish Defendant with phone number and was advised the court would consider Appellant's request for legal counsel after Defendant filed Motion for Summary Judgment.[1]

[1]District Court received certified letter from Appellant with change of address, home and work number. Defendant stated in letter to District Court that efforts to reach Ms. Morris were null. Appellant was still employed by Southwestern Bell Telephone Company and was listed with the Employee Locator Service of the Company.

STATEMENT OF FACTS

On October 2 1992, Beatrice Rhea Morris Filed an action entitled Beatrice Rhea Morris v. Southwestern Bell Telephone Company. Number 92 2043 R, in the United State District Court for the Northern District of Texas - Dallas Division, seeking reinstatement to previous management position with retroactive back pay and benefits with no loss of seniority or time in grade for promotional and other considerations from the effective date of the demotion; expulsion of all correspondence and any other annotated material regarding this matter from Appellant's personnel record. In addition, Appellant wanted to include a compensatory sum for the emotional pain, suffering and inconvenience caused by the malious discriminatory action taken by the Company.[2] After hearing the evidence, Appellant requests one (1) year's profit from Southwestern Bell Telephone Company or one hundred and fifty million dollars ($150 million) to discourage further acts of discrimination and/or retaliation.

At the time of filing her complaint pursuant to EEOC, the United States District Court having jurisdiction in Appellant's case, application for legal representation was submitted.

After the District Court Order on January 27, 1993, Ms. Morris awaited answer from Court for legal counsel. Ms. Morris made an appearance on June 8, 1993 in the Judge Buchmeyer Court to inquire of status for legal counsel. She was advised by the Judge's clerk that it would be best to address a letter to the court stating her concerns and inquiries.

Court Order dated April 14 1993 with attached Court Order dated January 23, 1993, the District Court so ordered; (1) Defendant shall file proper answer by April 23, 1993, and (b) the Defendant shall file it's Motion for Summary Judgment by May 12, 1993.

[2]Appellant's physical, mental and emotional condition suffered in direct correlation to the demotion. Appellant now takes high blood pressure medication and participates in out-patient group therapy.

With respect to the Court, Appellant continued to await answer from the Court for legal counsel.

On June 10, 1993, Ms. Morris certified a letter to the District Court inquiring about decision for counsel.

On July 21, 1993, Appellant reviewed case file 92 2043 R at 1100 Commerce, 14 floor and discovered that the letter certified to the District Court was not included in file. When she questioned the clerk about the letter, she was told that it was addressed to the Judge, but not to the District Clerk. Appellant told Clerk that she hand walked a copy of the letter to Judge Buchmeyer's office, and certified the original to the District Clerk. The Clerk took the latter and confirmed with her supervisor. The Clerk advised Appellant that letter would be placed in case file. [3]

On September 3, 1993, Appellant received Opinion and Order dated August 31, 1993 ordering that the Defendant's motion for summary judgment be granted.

SUMMARY OF ARGUMENT

The Order and Opinion denying Appellant's Motion for Reconsideration should be vacated because (a) the District Court's oversight to answer Appellant's request for legal counsel denying her individual procedural rights, and (b) when the existence of evidence in a case is such that a different conclusion can rationally be drawn thereon, then the case presented is one for the jury.

There are 2 primary reasons why the Order and Opinion must be vacated, each as a matter of law, and each enough individually to require reversal. First, Ms. Morris had a constitutionally protected right to legal counsel pursuant to EEOC guidelines and the Federal District Court having jurisdiction over her complaint. Second, evidence entered in the Memorandum of Appellant's Motion for Reconsideration severely affected a substantial right of the party.

[3]Certified Letter is not included in Docket.

The jurisprudence system of the United States is designed to allow all interested parties to present facts in support of their contentions. The United States Constitution requires this. The courts have always recognized the danger of allowing only one side to present its story, and observed how the "facts" have changed once the other has been allowed to cross examine or present evidence. Ms. Morris was not given this opportunity, and now must appeal district court order and opinion pursuant to a system that did not allow her voice to be heard or the introduction of facts in her behalf. Clearly, this Order and Opinion must be vacated.

ARGUMENT

Standard of Review

As set fort in Appellant's Motion for Reconsideration, the Order is essential to guarding the party's constitutional rights 5th Amendment.

Since there was no allowance for the Appellant to present her facts in this case, the following materials were utilized to determine party's legal stance:

EEOC - Filing Suit in U. S. District Court
Federal Rules of Civil Procedures, 1993 Rule 60 (b)
Article I Rule 101, 102, 103 Federal Rules of Evidence
Violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. S 2000e - 2(a)(1)
Fair, Square, and Legal - Donald H. Weiss 1991
United State Constitution 5th Amendment
46 Am Jur 2dm Judgment S 117
Roberts Judicial Notice: An Essay Concerning Human Misunderstanding, 61 Wash LR 1435, October 1986

CONCLUSION

The Opinion and Order must be vacated. It has no basis factually, procedurally or legally. The Order also raises significant constitutional issues, and clearly violates Ms. Morris' constitutional due process rights. These serious problems are in addition to the fundamental fact that the District Court had jurisdiction over Ms. Morris.

REQUEST FOR RELIEF

For the foregoing reasons, appellant respectfully requests that the Opinion and Order dated September 27, 1993 be vacated in all respects, and that Ms. Morris be awarded an opportunity to present her facts in the case and such other relief as she may be entitled.

Respectfully submitted,

s/Beatrice Rhea Morris
APPELLANT PRO SE

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 1994, a true and correct copy of the Brief of Appellant Beatrice Rhea Morris, together with exhibits was caused to be delivered to counsel of record as follows:

BY FEDERAL EXPRESS

Peter C Myers Jr., Att.
One Bell Plaza Room 2900
P. O. Box 65521
Dallas, Texas 75265-5521

s/Beatrice Rhea Morris

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93 - 1988

BEATRICE RHEA MORRIS,

Plaintiff-Appellant,

versus

SOUTHWESTERN BELL TELEPHONE CO.,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Texas

---

ON PETITION FOR REHEARING

(April 18, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:
s/SMILIS M. SANZT
United States Circuit Judge

U.S. Court of Appeals
FILED
April 18, 1994
Charles R. Fulgruge III-Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93 - 1988

BEATRICE RHEA MORRIS,
Appellant
v.
SOUTHWESTERN BELL TELEPHONE COMPANY
a Missouri Corporation;
Appellee

ON APPEAL FROM THE NORTHERN DISTRICT OF TEXAS

APPELLANT'S PETITION FOR REHEARING

U.S. Court of Appeals
Filed
April 5, 1994
Charles R. Fulbruge III
Clerk

s/Beatrice Rhea Morris

U. S. Court of Appeals
Received
April 5, 1994
New Orleans, La.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-1988

Beatrice Rhea Morris
Petitioner

v.

Southwestern Bell Telephone Company
Respondent

Petition for Rehearing

Beatrice Rhea Morris hereby petitions the court for rehearing of the court's decision filed March 22, 1994 affirming the District Court's decision (CA 3:92 - 2043 R) dated September 27, 1993 entered on April 5, 1994.

Beatrice Rhea Morris
Pro Se

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93 - 1988

Beatrice Rhea Morris,
Petitioner

v.

Southwestern Bell Telephone Company
a Missouri Corporation,
Respondent

On Appeal from the Northern District of Texas

Appellant's Petition for Rehearing

To The Honorable Court of Appeals:

Comes now, Beatrice Rhea Morris, Appellant in the above titled action pursuant to Rule 40 of the Rules of Appellate Procedure petitioning for rehearing.

STATEMENT OF ISSUES TO MERIT REHEARING

A genuine issue of material fact has been properly raised by Ms. Morris, Appellant, and the District Court has based its judgment on findings of false information:

A. The District Court failed to issue an order denying or affirming Appellant's application for counsel when jurisdiction fell within its realm as a matter of law violating her due process.

B. The District Court demonstrated judicial bias when the introduction of relevant evidence was cited in the Motion for Reconsideration as pursuant to Article I Rule # 101, #102, and #103 of the Federal Rules of Evidence.

C. The District Court demonstrated judicial bias for over extension of time afforded Southwestern Bell Telephone Company in their initial answer to complain which failed to address Appellant's claims of discrimination.

Ms. Morris submitted a motion for appointment of counsel dated October 2, 1992 with attached affidavits along with her complaint. Ms. Morris submitted a letter to the Court requesting the status of her application dated June 10, 1993. Again, the District Court failed to issue an answer.

After the District Court's decision ordering summary judgment for Southwestern Bell Telephone Company, Ms. Morris submitted a Motion for Reconsideration dated September 15, 1993. The District Court issued an order denying the Motion for Reconsideration when evidence presented a question of the validity of the Order.

The District court in its order dated January 27, 1993 disregarded the Defendant's initial answer which failed to articulate a reason for her demotion in a non-discriminatory manner.

According to the 1991 Civil Rights Act, the Defense has to disprove the claims - not just state reasons. Ms. Morris submitted 22 articles of official documents which supported her claim of discrimination, but none of the evidence was even addressed by the District Court.

Appellant has raised a genuine issue for trial by establishing a prima facie disparate treatment case of discriminatory discipline under Title VII: (1) black female; (2) satisfactory performance in her position; (3) replaced by white-female; and (4) no other employees were so disciplined. When the burden is to prove by the preponderance of the evidence (Bazemore v. Friday, 478 U.S. 385, 400 - 1986), the non consideration of such information is an injustice.

Petitioner contends that her case is in the Appeals Court because the Federal Rules of Civil Procedure were not followed.

WHEREFORE, Petitioner respectfully requests rehearing in her favor.

Respectfully submitted,
s. Beatrice Rhea Morris

CERTIFICATE OF SERVICE

This is to certify that on April 4, 1994 the foregoing instrument was mailed to Peter Myers, Jr., One Bell Plaza, Rm. 2900, P. O. Box 655521, Dallas, Texas 75265-5521 by United States certified mail with return receipt requested.

s/Beatrice Rhea Morris
Pro Se

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93 - 1988

(Summary Calendar)

BEATRICE RHEA MORRIS,
Plaintiff

versus

SOUTHWESTERN BELL TELEPHONE CO.,
Defendant-Appellee

Appeal from the United States District Court
For The Northern District of Texas
(3:92-CV-2043-R)

Before JOLLY, WEINER, and EMILIO M. GARZA, Circuit Judges. PER CURIAM:

AFFIRMED. See Loc. 4. 47.6.

U.S. Court of Appeals
Filed
Mar 22, 1994
Charles R. Fulbruge, III
Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BEATRICE RHEA MORRIS)
Plaintiff,)
) Civil Action
No.
) CA 3:92-
2043-R
)
VS)
)
SOUTHWESTERN BELL TELEPHONE CO.)
Defendant)

ORDER

On the _____-day of _____ came to e heard plaintiff, Beatrice Rhea Morris with a motion for reconsideration and brief. After careful consideration, the motion is found to be with merit.

Therefore, on this _____-day of_____ this motion is so ordered.

_____
U. S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Beatrice Rhea Morris, Plaintiff,	)	
VS.	)	CIVIL ACTION NO. CA 3:92-2043-R
Southwestern Bell Telephone Co. Defendant	)	

PLAINTIFF'S MOTION FOR RECONSIDERATION AND BRIEF

Comes now Beatrice Rhea Morris, Plaintiff in above-titled and numbered action, and pursuant to Rule 56(e)(g) of the Federal Rules of Civil Procedure, respectfully requests motion for reconsideration on the grounds pursuant to EEOC, the United States District Court having jurisdiction in Plaintiff's case, filed application for attorney representation along with discrimination complaint. Plaintiff understood Court's Order dated January 27, 1993 and April 14, 1993 that consideration for attorney representation would not be entertained until Defendant answered Order for summary judgment. In support of this motion, Plaintiff cites letter to the Court on April 26, 1993 and letter dated June 10, 1993. In support of this motion, Plaintiff relies on notarized statements of Joni Jefffords and Linda F. Brown, official documented records, exhibits and all other matters properly before the Court.

Plaintiff moves for reconsideration on the basis pursuant to Rule 60(b) of the Federal Rules of Civil Procedure in that Affidavit of Hardee Miills and exhibit 1 are fraudulent and misrepresenting. Plaintiff was immediately replaced by newly for violation of an unwritten policy (governing the personal use of Yellow Cab slips) by being subjected to an adverse personnel action by Southwestern ell Telephone Company management officials on the basis of her race (black). Plaintiff further states

that all managers in Southwestern Bell Telephone Company have the authority to sign cab vouchers for subordinates, peers, and other upper-level management personnel. As a manner of practice for years prior to 1985, Network Operator Services furnished the availability of Yellow Cab Company at no cost to employees working late evening tours beginning at 4:15 pm. The practice for all other usage was left to the discretion of Management. There exits no written policy outlining any rules governing the use of cab vouchers only the generalization under the Company's Code of Business Conduct.

WHEREFORE, Plaintiff respectfully requests motion for reconsideration in her favor and extend time to answer defendant's motion for summary judgment.

Respectfully submitted,
s/Beatrice Rhea Morris
Plaintiff pro se

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Beatrice Rhea Morris, Plaintiff	)	
	)	CIVIL ACTION NO.
	)	CA 3:92-2043-R
VS	)	
Southwestern Bell Telephone Co. Defendant	)	

PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION

Comes now Beatrice Rhea Morris, Plaintiff in above-titled and numbered action, and pursuant to Rule 56(e)(g) and Rule 60(b) of the Federal Rules of Civil Procedure files this brief in support of her motion for reconsideration, showing the Court as follows:

I. STATEMENT OF CONTENTION

Plaintiff Beatrice Rhea Morris has filed her action for violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. basis that demotion occurred in order for newly promoted white female, Sandy Maurer, after being singled out for violation of an unwritten policy (governing the personal use of Yellow Cab slips) by being subjected to an adverse personnel action by Southwestern Bell Telephone Company management officials on the basis of her race (black). Plaintiff further states that all managers in Southwestern Bell Telephone Company have the authority to sign cab vouchers for subordinates, peers, and other

upper-level management personnel. As a manner of practice for years prior to 1985, Network Operator Services furnished the availability of Yellow Cab Company at no cost to employees working late evening tours beginning at 4:15pm. The practice for all other usage was left to the discretion of management. There exists no written policy outlining any rules governing the use of cab vouchers only the generalization under the Company's Code of Business Conduct.

Pursuant to EEOC, the United States District Court having jurisdiction in Plaintiff's case, filed application for attorney representation along with discrimination complaint. Plaintiff understood Court Orders dated January 27 1993 and April 14, 1993, consideration for attorney representation would not be entertained until Defendant answered Order for Summary Judgment.

This motion for reconsideration is submitted pursuant to the Court's Order of August 24, 1993.

In support of her motion, Plaintiff relies upon this brief, notarized statements of Joni Jeffords and Linda F. Brown, official documented records, exhibits and all other matters properly before the Court.

II. SUMMARY OF FACTS

Plaintiff was hired by Southwestern Bell in 1968 as an operator. In May 1992, she was demoted to the position of operator from the position of manager which she previously had held since 1981.

1. Plaintiff was served a warrant for her arrest on 4-30-92 at her work location for a returned check from Kroger Food Store. Exhibits 1,2

2. Plaintiff had requested special days which were granted by Kim Orsak, Area Manager Operator Services on 4-30-92, 5-1-92, 5-3-92. Exhibits 3, 4

Upon returning to work on 5-5-92, Plaintiff is demoted to entry-level during an investigatory - disciplinary meeting for use of cab vouchers. Exhibit 5

3. Plaintiff requested formal meetings with upper-level management to present her case. Exhibit 6

4. Plaintiff was denied further meetings with upper level management by interception of Hardee Mills, District Manager, Exhibit 7

5. Plaintiff continued to seek due process in a letter to William E. Dryer, President SWB-Texas. Exhibits 8,9

6. Affidavit of Hardee Mills is misrepresenting in the fact that he was not the district manager throughout the year 1991 as he so states. Exhibits 10,11,12,13,14

7. Kim Orsak's interview write-up containing defamatory statements about Plaintiff is contradicting in that she signed bill payments monthly acknowledging awareness. Actual date of interview and written interview appear only when submitted with Hardee Mills' affidavit. Plaintiff's 1991 work performance appraisal contained no reference to any interviews discussing cab vouchers. No discussions are not until after Plaintiff's arrest on 4-30-92. Exhibits 15, 16,17,18,19,20

8. Discriminatory practice was daily occurrences in the Conner Office. Exhibits 21,22

III. CONCLUSION

Plaintiff has stated a violation of Title VII. Her due process has not been within the law or humanly acceptable. Plaintiff has spent dedicated time to achievement in her job performance. Representatives of all walks of life have at some time committed indiscretions. Attempting to show how incredulous acts are committed against Plaintiff by some managers of Southwestern Bell Telephone Company is disturbing. Plaintiff respectfully appeals to the Court to allow her the opportunity of discovery in order to begin putting her life back together and prove that she is not what the Summary Judgment

portrays her to be. Plaintiff respectfully hopes the Court would consider her motion for reconsideration.

Respectfully submitted
s/Beatrice Rhea Morris
Plaintiff pro se

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

March 22, 1994

Ms. Beatrice Rhea Morris
2614 Pasteur Ave. #d 102
Dallas, Texas

No. 93-1988 - Morris v. Southwestern Bell Telephone

Enclosed a copy of the court's decision. A judgment has been entered pursuant to rule 36 of the Federal Rules of Appellate Procedures (FRAP). (The opinion may contain typographical or printing errors. If you discover an apparent mistake, please contact the Clerk's Office at (504) 589-2570.)

Rules 39, 40 and 41, FRAP and Local Rules 39 and 41 govern costs, petitions for rehearing and mandates. A petition for rehearing must be filed in the Clerk's Office within fourteen (14) days from this date. Placing the petition in the mail on the 14th day will not suffice.

If you were unsuccessful in the district court and on appeal, and will be considering filing a petition for certiorari in the Supreme Court, there is no need to file a motion for stay of mandate under FRAP 41, since issuance of the mandate does not affect the time or the right to file such a petition.

The judgment entered provides the plaintiff-appellant pay to defendant-appellee the costs on appeal.

Very truly yours,

CHARLES R. FULBRUGE III, CLERK
s/Rhonda Flowers, Deputy Clerk

Enclosures
cc: M. Peter Caverno Myers, Jr.

Attachment

47.16 Affirmance Without Opinion

When the Court determines that any one or more of the following circumstances exists and is dispositive of a matter submitted to the Court for decision: (1) that a judgment of the District Court is based on findings of fact which are not clearly erroneous, (2) that the evidence in support of a jury verdict is not insufficient, (3) that the order of an administrative agency is supported by substantial evidence on the record as a whole, or (4) in the case of a summary judgment, that no genuine issue of material fact has been properly raised by the appellant, and the Court also determines that no error of law appears and an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion.

In such case, the Court may in its discretion enter either of the following orders: "AFFIRMED. See Loc. R. 47.6." or "ENFORCED. See Loc. R. 47.6."

See N.L.R.B. V. Amalgamated Clothing Workers of America, 5th Cir. 1970, 430 F. 2d 966.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

BEATRICE RHEA MORRIS

VS,

SOUTHWESTERN BELL TELEPHONE COMPANY

COMPLAINT

Jurisdiction

The Plaintiff is a black female full-time employee of Southwestern Bell Telephone Company ("Company") located in Dallas, Texas. She was hired August 16, 1968, as an operator. She worked in that job position thru July 15, 1981. The Plaintiff was promoted to the position of Group Manager Operator Services effective July 16, 1981. The plaintiff held this management position until she was discriminatorily demoted to the position of entry-level operator on May 10, 1992. Specifically, the Plaintiff alleges that she was singled out for violation of an unwritten policy (governing the personal use of Yellow Cab slips) by being subjectd to an adverse personnel action by Southwestern Bell Telephone Company managment officals on the basis of her race (black). As part and parcel of the discriminatory action the Plaintiff further contends that the decision her immediate supervisor, Kim Orsak, white, Area Manager Operator Services and Hardee Mills, white, District Manager Operator Services and possibly others concurred on, regarding the alleged policy infraction, denied her due process by not affording her formal notification (in writing) of the charges, nor the oportunity and time for preparation, presentation and time to secure representation to prepare a defense to redress the charges.

Nevertheless, Kim Orsak and Hardee Mills reached a joint unilateral decision and verdict without benefit of redress by the Plaintiff in accordance with the Company's due process procedures. To that end, the Company offered the Plaintiff two adverse peronnel options (demotion to entry-level operator or employment termination) that is considered more servere than the offense committed. The Plaintiffs physical, mental and emotional condition has suffered as a direct correlation to the discriminatory demotion. The Plaintiff takes medication for high blood pressure and participates in out-patient group therapy sessions. The Plaintiff believes that no other Company employees, similarly situated, have been so adversely affected.

Remedies requested of the Court:
Plaintiff requests reinstatement ot previous management position with retroactive back pay and benefits with no loss of seniority or time in grade for promotional and other considerations from te effective date of the demotion; expulsion of all correspondence and any ohter asnnotated material regarding this matter from Plaintiff's personnel record. In addition, Plaintiff wants to include a compensatory sum for the emotional pain, suffering and inconvenience, caused by the malicious discriminatory action taken by the Company. Aftr hearing the evidednce, Plaintiff will request one (1) year's profit from Southwestern Bell Telephone Company or one hundred and fifty million dollars ($150 million) to discourage further acts of discrimination and/or retaliation.

10-2-92 s/Beatrice R. Morris

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

BEATRICE RHEA MORRIS

VS,

SOUTHWESTERN BELL TELEPHONE COMPANY

COMPLAINT

Jurisdiction

The Plaintiff is a black female full-time employee of Southwestern Bell Telephone Company ("Company") located in Dallas, Texas. She was hired August 16, 1968, as an operator. She worked in that job position through July 15, 1981. The Plaintiff was promoted to the position of Group Manager Operator Services effective July 16, 1981. The plaintiff held this management position until she was discriminatory demoted to the position of entry-level operator on May 10, 1992. Specifically, the Plaintiff alleges that she was singled out for violation of an unwritten policy (governing the personal use of Yellow Cab slips) by being subjected to an adverse personnel action by Southwestern Bell Telephone Company management officials on the basis of her race (black). As part and parcel of the discriminatory action the Plaintiff further contends that the decision her immediate supervisor, Kim Orsak, white, Area Manager Operator Services and Hardee Mills, white, District Manager Operator Services and possibly others concurred on, regarding the alleged policy infraction, denied her due process by not affording her formal notification (in writing) of the charges, nor the opportunity and time for preparation, presentation and time to secure representation to prepare a defense to redress the charges.

Nevertheless, Kim Orsak and Hardee Mills reached a joint unilateral decision and verdict without benefit of redress by the Plaintiff in accordance with the Company's due process procedures. To that end, the Company offered the Plaintiff two adverse personnel options (demotion to entry-level operator or employment termination) that is considered more severe than the offense committed. The Plaintiffs physical, mental and emotional condition has suffered as a direct correlation to the discriminatory demotion. The Plaintiff takes medication for high blood pressure and participates in out-patient group therapy sessions. The Plaintiff believes that no other Company employees, similarly situated, have been so adversely affected.

Remedies requested of the Court:
Plaintiff requests reinstatement to previous management position with retroactive back pay and benefits with no loss of seniority or time in grade for promotional and other considerations from the effective date of the demotion; expulsion of all correspondence and any other annotated material regarding this matter from Plaintiff's personnel record. In addition, Plaintiff wants to include a compensatory sum for the emotional pain, suffering and inconvenience, caused by the malicious discriminatory action taken by the Company. After hearing the evidence, Plaintiff will request one (1) year's profit from Southwestern Bell Telephone Company or one hundred and fifty million dollars ($150 million) to discourage further acts of discrimination and/or retaliation.

10-2-92 s/Beatrice R. Morris

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

BEDROCK R. MORRIS, *Plaintiff*	]	
vs,	]	3:92-CV-2043-R
SOUTHWESTERN BELL TELEPHONE COMPANY, *Defendant*	]	

ORDER

The plaintiff, who is pro se, failed to serve the defendant with a copy of her complaint (filed October 2, 1992).

The defendant's Motion to Dismiss (filed January 13, 1992) is defective because it was not accompanied by an order as required by the Local Rules of this Court.

In the interests of saving time and expense to the parties:

1. A copy of the complaint is attached to this order. This will correct the defective service.
2. The plaintiff shall, within ten (10) days from the date of this Order, furnish the defendant's attorney with her current work and home telephone numbers.
3. This Court will not consider the pro se plaintiff's request for appointment of an attorney until the defendant has filed a motion for summary judgment.

U.S. District Court
Northern District of Texas
FILED Jan. 27, 1993 Nancy Doherty, Clerk

4. The defendant's answer shall be filed within ten (10) days from the date of this Order.

SIGNED THIS 27TH DAY OF JANUARY, 1993

s/ Jerry Buchmyer
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BEATRICE RHEA MORRIS,	}	
Plaintiff	}	
	}	
vs.	}	**Civil Action no. CA3922043**
	}	
SOUTHWESTERN BELL	}	
TELEPHONE COMPANY	}	
Defendant	}	

MOTION FOR THE APPOINTMENT OF COUNSEL

I request that the court appoint an attorney to represent me in the matter cited above. In support of this motion I have attached the following::

1. An affidavit relating to my ability to pay costs and fees.

2.. Other material, if any:

_____

_____

I have made the following efforts to obtain counsel from legal aid or legal services organization or individual attorneys without payment of a fee or on a contingent fee basis, and have been unable to obtain services of counsel:

Date: 10-2-92 s/Beatrice Rhea Morris

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT TEXAS
DALLAS DIVISION

BEDROCK R. MORRIS	}	
Plaintiff,	}	
	}	
vs.	}	**3:92-CV-2043-R**
	}	
SOUTHWESTERN BELL	}	
TELEPHONE CO.,	}	
Defendant	}	

ORDER

Despite this Court's Order of January 27, 1993, the defendant has not filed a proper answer in this case. It is **ORDERED** that:

(a) the defendant shall file a proper answer by April 23, 1993; and
(b) the defendant shall file its Motion for Summary Judgment by May 12, 1993.

SIGNED THIS 14TH DAY OF APRIL, 1993

s/Jerry Buchmeyer
United States District Judge

June 10, 1993

Certified Mail # P 316 190 974

Honorable Jerry Buchmeyer
United States District Judge
1100 Commerce
Rm. 15E6C
Dallas, Texas 75202

Re. Civil Action No. 3:92-CV-2043-R, Beatrice R. Morris v. Southwestern Bell Telephone Company in the United States District Court for the Northern District of Texas, Dallas Division

Dear Judge Buchmeyer:

On Tuesday (6-8-93) I visited the United Sates District Clerk's office to review my case for the second time during a two week period. Upon completion of my review, I noticed there had been no further activity since 5-12-93. I decided to visit your office to inquire about the status of my case.

Ms. Seesta was very helpful informing of (1) my case had not been assigned a trial date, (2) court appointment of attorney was very infrequent under Title VII, and (3) it would be a good idea to address a letter to you expressing my concerns,

I have been able to proceed to this point with my case utilizing the Guide for Filing Civil Cases in United States District Court, aid of similar cases on file, and research of laws pertaining to Title VII.

As a layman, I have exhausted my ability with regards to the continuous process of my case. Therefore, according to your Order (January 27, 1993...[3] "This Court will not consider the pro se plaintiff's requested for appointment of an attorney until

the defendant has filed a motion for summary judgment") Would you please advise me if further action or information is needed?

Thank you very much for your consideration.

Respectfully,

s/Beatrice R. Morris

cc: Nancy Doherty US District Clk #P 316 190 974
cc: Peter Myers, Jr. Cert ma. #P 316 190 982

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BEATRICE RHEA MORRIS,	}	
Plaintiff	}	
	}	**3:92-CV-2043-R**
vs.	}	
	}	
SOUTHWESTERN BELL	}	**Entered on Docket**
TELEPHONE CO.	}	**9-1-93 Pursuant**
Defendant	}	**to FRCO rules 48 & 79a**

OPINION AND ORDER

Defendant Southwestern Bell Telephone Company ("Bell") filed a motion for summary judgment. This Court is of the opinion that Bell's motion for summary judgment should be GRANTED.

BACKGROUND

Plaintiff Beatrice Rhea Morris ("Morris") claims in her complaint that Bell hired her as an operator on August 16, 1968. In 1981, Morris was promoted to a management position.

On January 29, 1991, Kim Orsak ("Orsak") area manager and Morris' supervisor, warned Morris that Morris' use of cab vouchers was a violation of Bell's Code of Business Conduct. Orsak also told Morris that further misuse of the cab vouchers could result in Morris' dismissal. Despite the warning, Morris continued to use the cab vouchers for unauthorized use for transportation to and from work.

In may 1992, Orsak discovered Morris had continued misusing the cab vouchers and again reviewed the situation with Morris. On May 5, 1992, Orsak gave Morris the option of early retirement or demotion. Morris appealed the decision to upper

management. On May 12, 1992, the general manager, Mr. Allison, reviewed the situation and upheld Orsak's decision.

Morris chose to take the demotion to the position of entry-level operator on May 10, 1992. Morris claims that the reason for her demotion was racial discrimination. She claims her supervisors, Kim Orsak and Hardee Mills, denied her due process. Bell gave Morris two choices: either termination or demotion. Unable to obtain the legal counsel, Morris proceeded as a pro se litigant.

ANALYSIS

Awarding summary judgment is appropriate when no genuine issue of material fact exists when the facts are viewed in favor of the plaintiff.[1] If this is the case, then the court should award judgment to the moving party as a matter of law.[2]

In *McDonnell Douglas Corp. v. Green*, the Supreme Court addressed the issue of which party bears the burden of proof.[3] Initially, the plaintiff bears the burden of making a prima docie case of unlawful racial discrimination.[4] Morris must show that (1) she is a member of a racial minority, (2) she was terminated, (3) someone not within the protected group replaced him, and (4) he possessed the qualifications for the job.[5]

Then the defendant has the burden of production to provide a legitimate, nondiscriminatory reason for the discharge.[6] The articulated reason does not have to be the actual reason for

[1] *Johnson v. Minnesota Historical Soc'y*, 931 F.2d 1239, 1244 (8th Cir. 1991).
[2] Id.
[3] 411 U.S. 792, 800 (1973)
[4] *McDonnell*, 411 U.S. at 802.
[5] *Price*, 561 F.12d at 612; *Williams v. General Motors*, 656 F.2d 120, 128 (5th Cir. 1981); *Corrigan v. New York University Medical Ctr.*, 606 F. Supp. 345, 347 (S.D.N.Y. 1985)
[6] *Price v. Maryland Casualty Co.*, 561 F.2d 609, 612 (5th Ciur. 1977); *Loeb v. Textron, Inc.*, 600 F.2d 1003, 1011 (1st Cir. 1979)

the termination. [7] Instead, the burden of persuasion stays with the plaintiff, and he must show that the defendant's reason is merely a pretext.[8]

Bell claims that Morris misused cab vouchers despite warnings that such violations were against company rules. Morris was allowed to appeal the disciplinary action. Even assuming that Morris has established a prima facie case of discrimination, Bell has provided a legitimate reason for Morris' demotion and has rebutted Morris' allegations. Morris has failed to show that Bell' articulated reason was merely pre textual. It is therefore ORDERED that the defendant's motion for summary judgment by GRANTED.

SIGNED THIS 24TH DAY OF AUGUST, 1993.

s/ Jerry Buchmeyer
United States District Judge

[7] *Loeb*, 600 F.2d at 1011.
[8] *Id.* at 1011-1012.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BEATRICE RHEA MORRIS	]	
Plaintiff	]	
	]	
vs.	]	**CIVIL ACTION NO.**
	]	**CA 3:92-2043-R**
SOUTHWESTERN BELL TELEPHONE CO.	]	
	]	
	]	

PLAINTIFF'S MOTION FOR RECONSIDERATION AND BRIEF

Comes now Beatrice Rhea Morris, Plaintiff in above titled and numbered action, and pursuant to Rule 56(e)(g) of the Federal Rules of Civil Procedure, respectfully requests motion for reconsideration on the grounds pursuant to EEOC, the United Sates District Court having jurisdiction in Plaintiff's case, filed application for attorney representation along with discrimination complaint. Plaintiff understood Court's Order dated January 27, 1993 and April 14, 1993 that consideration for attorney representation would not be entertained until Defendant answered Order for summary judgment. In support of this motion, Plaintiff cites letter to the Court on April 26, 1993 and letter dated June 10, 1993. In support of this motion, Plaintiff relies on notarized statements of Joni Jeffords and Linda F. Brown, official documented records, exhibits and all other matters properly before the Court.

Plaintiff moves for reconsideration on the basis pursuant to Rule 60 (b) of the Federal Rules of Civil Procedure in that Affidavit of Hardee Mills and exhibit 1 are fraudulent and misrepresenting. Plaintiff was immediately replaced by newly promoted white female, Sandy Maurer, after being singled out for violation of an unwritten policy (governing the personal use of

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WHEREFORE, Plaintiff respectfully requests motion for reconsideration in her favor and extend time to answer Defendant's motion for summary judgment.

Respectfully submitted,
s/ Beatrice Rhea Morris
Plaintiff Pro Se

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BEATRICE RHEA MORRIS	]	
Plaintiff	]	
	]	
vs.	]	CIVIL ACTION NO.
	]	CA 3:92-2043-R
SOUTHWESTERN BELL	]	
TELEPHONE CO.	]	
Defendant	]	
	]	

PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION

Comes not Beatrice Rhea Morris, Plaintiff in above-titled and numbered action, and pursuant to Rule 56(e)(g) and Rule 60(b) of the Federal Rules of Civil Procedure files this brief in support of her motion for reconsideration, showing the Court as follows:

I STATEMENT OF CONTENTIONS

Plaintiff Beatrice Rhea Morris has filed her action for violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. S 2000e-2(a)(1). Plaintiff moves for reconsideration on the basis that demotion occurred in order for newly promoted whit female, Sandy Maurer, after being singled out for violation of an unwritten policy (governing the personal use of Yellow Cab slips) by being subjected to an adverse personnel action by Southwestern Bell Telephone Company management officials on the basis of her race (black). Plaintiff further states that all managers in Southwestern Bell Telephone Company have the authority to sign cab vouchers for subordinates, peers, and other upper-level management personnel. As a manner of practice for

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Pursuant to EEOC, the United States District Court having jurisdiction in Plaintiff's case, filed application for attorney representation along with discrimination complaint. Plaintiff understood Court Orders dated January 27, 1993 and April 14, 1993, consideration for attorney representation would not be entertained until Defendant answered Order for Summary Judgment.

This motion for reconsideration is submitted pursuant to the Court's Order of August 24, 1993.

In support of her motion, Plaintiff relies upon this brief, notarized statements of Joni Jeffords and Linda F. Brown, official documented records, exhibits and all other matters properly before the Court.

II SUMMARY OF FACTS

Plaintiff was hired by Southwestern Bell in 19678 ass an operator. In may 1992, she as demoted to the position of operator from the position of manager which she previously had held issuance 1981.

1. Plaintiff was served a warrant for her arrest on 4-30-92 at her work location for a returned check from Kroeger Food Store. Exhibit 1,2

2. Plaintiff had requested special days which were granted by Kim Orsak, Area Manager Operator Services on 4-30-92, 5-1-92, 5-3-92. Exhibits 3,4

Upon returning to work on 5-5-92, Plaintiff is demoted to entry-level during an investigatory-disciplinary meeting for use of cab vouchers. Exhibit 5

3. Plaintiff requested formal meetings with upper level management to present her case. Exhibit 6

4. Plaintiff was denied further meetings with upper level management by interception of Hardee Mills, District mgr. Exhibit 7

5. Plaintiff continued to seek due process in letter to William E. Dreyer, President SWB-Texas. Exhibits 8,9

6.. Affidavit of Hardee Mills is misrepresenting in the fact that he was not the district manager throughout the year 1991 as he so states. Exhibit's 10, 11,12,13,14

7. Kim Orsak's interview write-up containing defamatory statements about Plaintiff is contradicting in that she signed bill payments monthly acknowledging awareness. Actual date of interview and written interview appear only when summated with Hardee Mills' affidavit. Plaintiff's 1991 work performance appraisal contained no reference to any interviews discussing cab vouchers. No discussions are noted until after Plaintiff's arrest on 4-30-92. Exhibits 15, 16, 17, 18, 19, 20

8. Discriminatory practice was daily occurrences in the Conner Office. Exhibits 21, 22

III. CONCLUSION

Plaintiff has stated a violation of Title VII. Her due process has not been within the law or humanly acceptable. Plaintiff has spent dedicated time to achievement in her job performance. Representatives of all walks of Life have at some time committed indiscretions. Attempting to show how incredulous acts are committed against Plaintiff by some managers of Southwestern Bell Telephone Company is disturbing. Plaintiff respectfully appeals to the Court to allow her the opportunity of discovery in order to begin putting her life back together and prove that she is not what the Summary Judgment portrays her to be. Plaintiff respectfully hopes the Court would consider her motion for reconsideration.

Respectfully submitted,
s/ Beatrice Rhea Morris
Plaintiff pro se

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BEATRICE RHEA MORRIS	]	
Plaintiff	]	
	]	**CIVIL ACTION NO.**
VS.	]	**CA 3:92-2043-R**
	]	
SOUTHWESTERN Bell	]	
TELEPHONE CO.,	]	
Defendant	]	
	]	

Certificate of Conference

Plaintiff pro se called the office of Counsel for the Defendant, Peter Myers Jr., on September 15, 1993 informing of motion for reconsideration.

s/ Beatrice R. Morris

Certificate of Service

This is to certify that on September 15, 1993 the foregoing instruments were mailed to Peter Myers, Jr., One Bell Plaza Rm 2900, P.O. Box 655521, Dallas, Texas 75265-5521 by United States certified mail with return receipt requested.

s/ Beatrice R. Morris

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BEATRICE RHEA MORRIS,	]	
Plaintiff	]	
	]	**3:92-Cv-2043-R**
vs.	]	
	]	
SOUTHWESTERN BELL	]	
TELEPHONE COMPANY	]	
Defendant	]	
	]	

ORDER

For the reasons stated in this Court's Opinion of August 31, 1993, the plaintiff's Motion for Reconsideration (filed September 15, 1993) is DENIED.

From the Motion for Reconsideration, it appears that the Plaintiff and two other employees (Lynda Brown, Joni Jeffords) do not like area manager Kim Orsak, and that they do not think that she is a good manager.

However, the record establishes that the plaintiff violated company policy regarding use of cab vouchers; that she was demoted for this reason -- not because of her race; and that the general manager, Mr. Allison, revised the demotion and rejected the plaintiff's appeal. There is no evidence to show that Mr. Allison made this decision because of the plaintiff's race.

The Motion for Reconsideration is DENIED.

SIGNED ON THE 27TH DAY OF SEPTEMBER, 1993.

s/ Jerry Buchmeyer
United States District Court

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

File Number 3:92-CV-2043-R

BEATRICE RHEA MORRIS,	]	
Plaintiff	]	
	]	**Notice of Appeal**
vs.	]	
	]	
SOUTHWESTERN BELL TELEPHONE CO.,	]	
Defendant	]	
	]	

Notice is hereby given that Beatrice Rhea Morris, in the above named case, hereby appeals to the United States Court of Appeals for the 5th Circuit an order denying motion for reconsideration entered in this action on the 27th day of October, 1993.

s/Beatrice Rhea Morris

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

File Number 3:92-CV-2043-R

BEATRICE RHEA MORRIS]
Plaintiff]
]
V.
]
SOUTHWESTERN BELL]
TELEPHONE COMPANY]
Defendant]
]
]

PLAINTIFF'S NOTICE OF APPEAL

Comes now Beatrice Rhea Morris, Plaintiff in the above titled and numbered action, and pursuant to Title II Rule 3(a) of the Federal Rules of Civil Procedure respectfully submits notice of appeal to order denying motion for reconsideration (filed September 27, 1993).

Plaintiff, with respect to the Court, followed procedures of EEOC and the pro se process awaited ruling from the Court on her application request for attorney representation. The Plaintiff understood Court's order dated January 27, 1993 and April 14, 1993 that consideration for attorney representation would not be entertained until Defendant answered order for summary judgment. In support of this notice, Plaintiff cites letter to the Court on April 26, 1993 and letter dated on June 10, 1993.

Plaintiff contends that failure to answer summary judgment occurred because of awaiting Court's decision on request for attorney representation and no reply to letter dated to the Court on June 10, 1993.

Plaintiff moves for appeal pursuant to Rule 60 (b) of the Federal Rules of Civil Procedure in that Affidavit of Hardee Mills and exhibit 1 are fraudulent and misrepresenting. Plaintiff submitted 22 official company documents supporting her motion for reconsideration pursuant to Article I Rule 101, 102, and 103 of the Federal Rules of Evidence. Subjecture was made by the Court. Evidence submitted was not considered as the law provides (order filed September 27, 1993).

Plaintiff moves for appeal on the basis that demotion occurred in order for newly promoted white female. Sandy Mauer could be placed (Violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. S 2000e-2 (a)(1). The act of being singled out for violation of an unwritten policy (governing the personal use of Yellow Cab slips) by being subjected to an adverse personnel action by southwestern Bell management officials1 (Jerry Allison-General Manager-Now demoted from 5th level to 4th level and Bob Thomas-vision Manager-now demoted from 4th level to 3rd level since filing of complaint) was pre textual. There exists no written policy outlining any rules explaining the use of cab vouchers only the general ilization under the Company's Code of Business Conduct. Plaintiff further states that all managers in Southwestern Bell Telephone Company have the authority to sign cab vouchers for subordinates, peers, and other upper-level management personnel. As a manner of practice for years prior to 1985, Network Operator Services furnished the availability of Yellow Cab at no cost to employees working late evening tours starting at 4:15pm. This provision was a means of attracting employees to these undesirable hours of work.

For the above reason, Plaintiff respectfully urges the Court to grant her appeal.

Respectfully submitted,
s/ Beatrice Rhea Morris

Certificate of Service

This is to certify that on October 27, 1993 the foregoing instrument were mailed to Peter Myers, Jr., One Bell Plaza, Rm. 2900, P.O . Box 655521, Dallas, Texas 75265-5521 by United States certified mail with return receipt requested.

s/ Beatrice Rhea Morris
]
Plaintiff pro se

(2)

Supreme Court, U.S.
FILED
SEP 15 1994
OFFICE OF THE CLERK

No. 94-0417

In The

Supreme Court of the United States

October Term, 1994

BEATRICE RHEA MORRIS,

Petitioner,

vs.

SOUTHWESTERN BELL TELEPHONE COMPANY,

Respondent.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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LIST OF ALL PARTIES

PETITIONER:

Beatrice Rhea Morris, a natural person.

RESPONDENT:

Southwestern Bell Telephone Company, a Missouri Corporation and a wholly owned subsidiary of Southwestern Bell Corporation, a Delaware Corporation

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No. 94-0417

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To The United States Court Of Appeals
For The Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

A. Proceedings in the Courts Below

On October 2, 1992, Plaintiff Beatrice R. Morris ("Plaintiff") filed her Complaint. In the Complaint, Plaintiff sought to challenge her demotion which resulted from Defendant Southwestern Bell Telephone Company's ("Defendant") determination that Plaintiff misappropriated company funds for personal use. On December 24, 1992, Defendant received a summons, but no copy of a complaint, for a civil action pending in the United States District Court for the Northern District of Texas, Dallas

Division, being Civil Action File No. 3:92-CV-2043-R. On January 13, 1993, Defendant filed "Defendant Southwestern Bell Telephone Company's Special Appearance and Motion to Dismiss." This pleading included Defendant's original answer to Plaintiff's complaint, generally denying the allegations of that pleading.

On January 27, 1993, the district court entered an order, correcting any defect in service of Plaintiff's complaint and directing Defendant to file an answer within ten days of the date of that order. As Defendant had already filed its answer as part of its January 13, 1993, filing, Defendant believed itself to be in compliance with the district court's directive.

On April 14, 1993, the district court entered an order directing Defendant to file "a proper answer by April 23, 1993." On April 23, 1993, Defendant filed "Defendant Southwestern Bell Telephone Company's Original Answer."

On May 12, 1993, Defendant filed "Defendant Southwestern Bell Telephone Company's Motion for Summary Judgment." On August 31, 1993, the district court issued an opinion and entered an order granting Defendant's motion for summary judgment.

On September 15, 1993, Plaintiff filed "Plaintiff's Motion for Reconsideration and Brief." The record is clear that, in spite of Plaintiff's failure to respond timely to Defendant's motion for summary judgment, the district court considered all of Plaintiff's evidence and arguments offered in opposition to that motion. On September 27, 1993, the district court entered its order denying Plaintiff's motion for reconsideration.

On October 27, 1993, Plaintiff filed her Notice of Appeal. By Per Curiam Order filed March 22, 1994, the United States Fifth Circuit Court of Appeals affirmed the district court's judgment. By Per Curiam Order filed April 18, 1994, Plaintiff's Petition for Rehearing was denied.

B. Statement of Facts

In this case, Plaintiff seeks to judicially challenge her demotion. Plaintiff was demoted because she misappropriated company funds for personal use.

In August 1968, Plaintiff was hired by Defendant as a telephone operator, a nonmanagement position. In July 1981, she was promoted to a first line manager position. In January 1991, Plaintiff's immediate supervisor was second line manager Kim Orsak. A second line manager is also referred to as an area manager.

In January 1991, Ms. Orsak found that Plaintiff had improperly used company vouchers for non-company business, specifically for cab fares to go to and from work. Defendant deems using company vouchers to pay for personal business to be a violation of the company's Code of Business Conduct, Defendant's statement of principles governing the business and individual conduct of its employees. On January 29, 1991, Ms. Orsak advised Plaintiff that she should not use vouchers for personal business, specifically for cab fare to go to and from work. Ms. Orsak told Plaintiff that future use of vouchers for personal business (such as for cab fares to go to and from work) would result in her dismissal. Plaintiff stated that

she understood completely. Affidavit of Hardee Mill, Exhibit 1. *See*, Tab 3 of Appellee's Record Excerpts.

In May 1992, Ms. Orsak had discovered that, in violation of company policy, Plaintiff had again used a cab voucher for transportation from Plaintiff's residence to her place of work. After checking further, Ms. Orsak discovered similar vouchers used by Plaintiff for the following dates: January 2, 1992, February 17, 1992, March 19, 1992, and April 15, 1992. In addition, Ms. Orsak found two occurrences of the use of cab vouchers in 1991. All of these vouchers appeared to Ms. Orsak to be in violation of company policy and all occurred after Ms. Orsak's January 1991 warning to Plaintiff.

On May 5, 1992, Ms. Orsak held an investigatory interview with Plaintiff concerning her personal use of cab vouchers to go between home and work. A copy of the May 5, 1992, investigatory meeting is attached to the Affidavit of Hardee Mills as Exhibit 2. *See* Tab 3 of Appellee's Record Excerpts. In the May 5, 1992 meeting, Plaintiff again acknowledged that she understood that the use of cab vouchers was a violation of company rules. Despite the fact that Plaintiff had been warned in January 1991 that further use of cab vouchers would result in her dismissal, Plaintiff continued to use cab vouchers in violation of company policy. Documents filed by Plaintiff in support of her motion for reconsideration confirm Defendant's contentions. In her own summary of these events, dated May 5, 1992, Exhibit 5 to Plaintiff's motion for reconsideration, Plaintiff wrote:

> "Janet Sykes asked if Kim [Orsak] had instructed me to discontinue the use of cab slips in January of 91 why had I used them in 92. I

> told Janet that I did not have faith in what Kim had said because it had been my experience working with her that she was not familiar with Company procedures in most areas. Also, I had the use of cab slips in the past and no one had ever questioned me about. But, I did not use them often because I would always use my own transportation.
>
> "Janet asked further why I had not gotten clarification from someone else when [Kim] told me that I could no longer use them. I told Janet that I did [sic] see it being a serious situation. Therefore, I did not give it any more thought. Also, there was no discussion about cab slips from January 91 until today."

In view of Plaintiff's knowing and continued violation of company policy, Ms. Orsak decided to give Plaintiff a choice between taking a downgrade back to a nonmanagement operator position (a demotion) or retiring and receiving her service pension. *See*, Affidavit of Hardee Mills, Exhibit 2; Tab 3 of Appellee's Record Excerpts.

Plaintiff appealed Ms. Orsak's decision to the General Manager of Operator Services, Jerry Allison. Mr. Allison is a fifth line manager. On May 11, 1992, Plaintiff met with Mr. Allison and, in that meeting, Plaintiff explained that she did not take seriously Ms. Orsak's January 1991 warning not to misuse cab vouchers and she acknowledged that she knew that the use of cab vouchers was against company rules. *See*, Affidavit of Hardee Mills, Exhibit 3; Tab 3 of Appellee's Record Excerpts.

On May 12, 1992, Plaintiff was informed that Mr. Allison had decided to uphold Ms. Orsak's decision. A

copy of the May 11 meeting and the May 12 notification are attached to Hardee Mill's Affidavit, as Exhibits 3 and 4; Tab 3 of Appellee's Records Excerpt. Plaintiff decided to accept a downgrade and is still employed by Defendant.

Plaintiff was demoted for a violation of the Defendant's Code of Business Conduct and for misappropriation of company funds by using cab vouchers for personal business. This misappropriation of company funds took place in spite of a direct instruction to Plaintiff by her immediate supervisor not to use company vouchers for personal business, including cab fares to go to and from home and work.

As part of her motion for reconsideration, Plaintiff offered 22 exhibits, setting out the facts on which her claim of racial discrimination was allegedly based. *See*, Civil Docket Sheet entry 13: Motion with Memorandum in Support by Plaintiff Beatrice Rhea Morris for Reconsideration of Order, September 15, 1993. *See also*, Plaintiff's Brief in Support of Motion for Reconsideration: Tab 3, Plaintiff's Record Excerpts. Plaintiff's evidence did not raise a genuine issue of material fact for determination at trial and, in fact, supported Defendant's iteration of the material facts surrounding Plaintiff's demotion. As Defendant was still entitled as a matter of law to a judgment in its favor, the district court correctly denied Plaintiff's motion for reconsideration and sustained *de facto* its prior order granting Defendant's motion for summary judgment.

SUMMARY OF THE ARGUMENT

In granting Defendant's motion for summary judgment, the district court applied the appropriate standards set out in this Court's trilogy of cases for such motions. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574 (1986); and, *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). In affirming the district court, the decision of the Fifth Circuit Court of Appeals is not in conflict with decisions of other courts of appeal or with the applicable decisions of this Court. The district court did not depart from the accepted and usual course of judicial proceedings and, therefore, the court of appeals did not sanction any such departure. In applying federal law, both the district court and the court of appeals followed established Title VII precedents.

The district court did not err in granting summary judgment to Defendant on Plaintiff's claim for violation of Title VII on the basis of race because, as a matter of law, Plaintiff failed to produce any evidence that any other employees similarly situated were disciplined less severely. Further, Defendant was entitled to summary judgment because Plaintiff presented no evidence that Defendant's articulated reason for her demotion was a pretext for racial discrimination.

The district court did not err in failing to appoint legal counsel for Plaintiff. Plaintiff was not terminated and did not retire. At all times relevant to her claim (up to and including the present), Plaintiff has been a full time employee of Defendant and, therefore, has had the

resources to employ her own attorney. *See* Brief of Appellant Beatrice Rhea Morris, page 2, fn. 1. Further, appointment of counsel would not have altered the fact that Plaintiff had no evidence to support the essential elements of her claim or any evidence to rebut Defendant's articulation of its nondiscriminatory and legitimate reason for Plaintiff's demotion.

ARGUMENT

A. The district court did not fail to consider the appropriate factors in determining whether to appoint legal counsel and Plaintiff cannot show an abuse of discretion with respect to the district court's decision. Therefore, the decisions of the lower courts should be affirmed.

The circuit courts agree that there is no automatic right to the appointment of counsel under Title VII. *Gonzalez v. Carlin*, 907 F.2d 573, 579 (5th Cir. 1990). *See*, 42 U.S.C. § 2000e-5(f)(1) "Upon application by the complainant and in such circumstances as the court *may deem just*, the court *may* appoint an attorney for such complainant and *may* authorize the commencement of the action without the payment of fees, costs, or security." The decision to appoint rests within the sound discretion of the district court. *Id.* Thus, the standard on appeal is the abuse of discretion standard.

The circuit courts are also in agreement as to the factors that generally ought to be considered in determining whether to appoint counsel.

> District courts analyzing the merits of a Title VII plaintiff's request for counsel should consider: (1) the merits of the plaintiff's claims of discrimination; (2) the efforts taken by the plaintiff to obtain counsel; and (3) the plaintiff's financial ability to retain counsel.

Gonzalez, 907 F.2d at 580. *See also, Ivey v. Board of Regents of the University of Alaska*, 673 F.2d 266, 269 (9th Cir. 1982); *Darden v. Illinois Bell Telephone Company*, 797 F.2d 497, 500-501 (7th Cir. 1986); *Gadson v. Concord Hospital*, 966 F.2d 32, 35 (1st Cir. 1992).

The merits of this case do not support any contention that the district court abused its discretion in refusing to appoint counsel. The presence of counsel would not have provided evidence that did not exist. There is simply no evidence that any of Defendant's employees were treated less severely under the same or similar circumstances and there is no evidence that Defendant's articulated reason for Plaintiff's demotion was merely a smoke screen for illegal employment discrimination.

Plaintiff admitted in her brief to the Fifth Circuit Court of Appeals that she was and is fully employed by Defendant. *See*, Appellant's Brief, page 2, fn. 1. As Plaintiff had the financial ability to retain counsel (or did not show that she was not financially unable to retain counsel), the district court's decision ought to be upheld as there is no evidence that the district court abused its discretion.

The generally accepted factors for analyzing a request to appoint counsel under Title VII do not support the appointment of counsel in this case. At a minimum, the merits of Plaintiff's claims of discrimination would

not support such an appointment. The district court reached the correct decision in granting Defendant's Motion for Summary Judgment, after a full review of Plaintiff's evidence. Moreover, Plaintiff's financial ability to retain counsel would not support such an appointment, either. There is simply no evidence that would support a contention that the district court abused its discretion in failing to appoint counsel.

B. The district court did not fail to consider any competent evidence and, therefore, the decisions of the lower courts should be affirmed.

The district court appropriately granted summary judgment because Plaintiff produced no evidence to raise a genuine issue of material fact with respect to an essential element of Plaintiff's *prima facie* case of discrimination under Title VII and because Plaintiff presented no evidence to rebut Defendant's articulation of a legitimate, nondiscriminatory reason for Plaintiff's demotion.

Under Title VII, in order to present a *prima facie* case of disparate treatment, Plaintiff must show (l) that she is a member in a protected class of persons; (2) that she performed satisfactorily in her position; (3) that she was disciplined (in this case, demoted) despite her satisfactory performance; and (4) that, under the same or similar circumstances, other employees (not in the protected class) were disciplined less severely. *See, McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 802 (1973); *Furnco Construction Corp. v. Waters,* 438 U.S. 567, 575 (1978). Plaintiff cannot and did not proffer any evidence raising a genuine issue of material fact on the question of whether there

were other of Defendant's employees similarly situated who were treated less severely than she. Because there is no evidence of this essential element of Plaintiff's *prima facie* case, summary judgment was properly granted. *Celotex*, 477 U.S. at 323.

In addition, an employer may rebut a plaintiff's *prima facie* case by articulating a legitimate, non-discriminatory explanation for the alleged discriminatory action. The plaintiff then has the burden of proffering competent evidence which raises a genuine issue of material fact that the articulated reason is merely a pretext for racial discrimination. Defendant articulated a legitimate, non-discriminatory explanation for the discipline, to-wit: Plaintiff's misconduct. Plaintiff was demoted because of a clear and flagrant violation of company rules and misuse of company funds *after* being informed that further use of taxi cabs for personal business at the company's expense would result in termination.

In the instant case, there is no evidence that, in demoting Plaintiff, Defendant was motivated by Plaintiff's race. The evidence is to the contrary. Defendant disciplined Plaintiff because of misconduct involving a violation of the Defendant's Code of Business Conduct; specifically, Plaintiff's misappropriation of company funds for personal use. Defendant's decision to discipline Plaintiff was taken only after an express warning to Plaintiff that further use of taxi cabs at company expense would result in her termination. In spite of this warning, Plaintiff continued to use cab vouchers for personal business.

Although Defendant was not obligated by law or contract to provide Plaintiff any further due process, the

decision to offer Plaintiff a choice between demotion and retirement was appealed by Plaintiff to higher management. After an investigatory meeting with Plaintiff's fifth line manager in which Plaintiff was permitted to argue her case, the decision to discipline Plaintiff for her misappropriation of company funds was upheld.

CONCLUSION

The lower courts have correctly applied established Title VII precedents and have used the appropriate standard for granting motions for summary judgment. The record is clear that the district court considered all competent evidence submitted by the parties in support of and in opposition to the dispositive motions made the basis of Plaintiff's petition.

Summary judgment was granted in Defendant's favor because Plaintiff failed to produce any evidence that any of Defendant's other employees similarly situated were disciplined less severely than Plaintiff and because Plaintiff failed to produce any evidence raising a genuine issue of material fact on the question of whether Defendant's articulated legitimate, nondiscriminatory reason for demoting Plaintiff was a pretext for racial discrimination.

For these reasons, this Court should deny Plaintiff's Petition for Writ of Certiorari, affirming the judgments of the lower courts.

Respectfully submitted,

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